

'Takings' Snapshots Volume 19, March 10, 1999

1. City of Monterey v. Del Monte Dunes Limited (U.S.) (Nearly five months since the oral argument in October, the U.S. Supreme Court still has not issued a decision in this case involving a takings challenge based on the denial of a permit to construct a major development along the Pacific coast; the decision may resolve the issue of the applicability of the Nollan/Dolan test outside the exactions context, as well as the viability of any type of means-ends analysis in takings doctrine).

2. Thomas v. Anchorage Equal Rights Commission, 1999 WL 11337 (the defendant, supported by numerous amici, has requested rehearing of this January 2 to 1 decision by the Ninth Circuit concluding that a prohibition against discrimination against unmarried couples in housing violates the free exercise clause, a decision based in part on a ruling that the plaintiffs stated a colorable claim that the law effected a per se physical occupation; the court has requested a response to the application for rehearing).

3. Diamond Bar Cattle Co. v. United States, 1999 WL 88945 (10th Cir. February 23, 1999) (affirming dismissal of claim by public land rancher seeking to establish right to use public range based on New Mexico water rights; court ruled that public land grazers hold only a revocable privilege to use public land, criticizing and distinguishing the decision by the U.S. Court of Claims in Hage v. United States).

4. Jones v. City of Berkeley Rent Stabilization Board, (On March 9, 1999, the California Supreme Court dismissed the pending appeal in this case on the ground that review had been improvidently granted; the court of appeals, consistently with the California Supreme Court's very recent decision in the Santa Monica Beach case, had ruled that intermediate means-ends scrutiny does not apply to ordinary regulations such as rent control; thus, dismissal of this appeal was the only logical result following the Supreme Court's ruling in Santa Monica Beach).

5. Eberth v. Carlson, 1999 WL 45178 (Kan. January 29, 1999) (affirming trial court finding that removal of existing highway crossover which eliminated direct highway access from plaintiff's private property did not effect a taking).

6. Cook v. United States No. 94-344L (Cl. Ct. January 27, 1999) (granting summary judgment to plaintiffs on takings claim where the plaintiffs had complied with all the terms and conditions necessary to establish their right to a patent under the 1872 Mining Act but were denied the patent due to the enactment of legislation designating a national recreation area and prohibiting the issuance of any new patents in the area).

7. Chicago Title Insurance v. The Village of Bolingbrook, 1999 Westlaw 65054 (N.D. Ill. February 5, 1999) (holding that city's impact fees on proposed new development for the purpose of financing road expansion violated the Illinois constitution because the city failed to carry its burden of demonstrating the fees were "specifically and uniquely attributable to the new development;" while the decision borrowed language from *Dolan v. City of Tigard*, plaintiff did not argue and the court did not rule that the fee effected an unconstitutional taking under *Nolan/Dolan*).

8. Champion's Auto Ferry, Inc., v. Michigan Public Service Commission, 588 N.W.2d 152 (Mich. Ct. App. October 2, 1998) (rejecting claim that Public Service Commission order requiring twelve-month continuation of ferry service effected an unconstitutional taking because (1) rates allowed plaintiff to operate at a profit and were not confiscatory, and (2) even if plaintiff's claim were viable, the proper remedy would be an award of just compensation filed in the Michigan Court of Claims).